



PUBLIC NOTICE

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DA 10-864
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DOMESTIC SECTION 214 AUTHORIZATION GRANTED

Domestic Section 214 Application Filed for the Acquisition of Assets of Comtel Telcom Assets L.P. and Comtel Virginia LLC by Matrix Telecom, Inc. and Matrix Telecom of Virginia, Inc.

WC Docket No. 10-82

Pursuant to section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214, and sections 0.91, 0.291, and 63.03 of the Federal Communication Commission's (Commission) rules, 47 C.F.R. §§ 0.91, 0.291, 63.03, the Wireline Competition Bureau (Bureau) approves the application of Matrix Telecom, Inc. (Matrix), Matrix Telecom of Virginia, Inc. (Matrix-VA), Comtel Telcom Assets LP (Comtel), and Comtel Virginia LLC (Comtel-VA) (collectively, Applicants) requesting approval to transfer assets from Comtel and Comtel-VA to Matrix and Matrix-VA.¹ The Bureau has determined that grant of this application serves the public interest,² and accordingly the application is granted pursuant to the Commission's procedures for domestic section 214 transfer of control applications.³

Hypercube Telecom, LLC (Hypercube) filed comments against the transaction.⁴ Hypercube argues that it is engaged in a long-running dispute with Comtel over access charges that Hypercube asserts Comtel owes for toll free calls Hypercube routed from end users to Comtel. Hypercube states that this issue is the subject of pending litigation in U.S. District Court in Texas, but that it is concerned that the transaction will allow Comtel to evade obligations to pay Hypercube for past due amounts and that the merged entity will fail to pay Hypercube in the future.⁵ It also states that Comtel filed an informal

¹ Joint Application of Matrix Telecom, Inc., Matrix Telecom of Virginia, Inc. and Comtel Telcom Assets LP, Comtel Virginia LLC, WC Docket No. 10-82 (filed Mar. 22, 2010) (Application); *Domestic Section 214 Application Filed for the Acquisition of Assets of Comtel Telecom Assets L.P. and Comtel Virginia LLC by Matrix Telecom, Inc. and Matrix Telecom of Virginia, Inc.*, WC Docket No. 10-82, Public Notice, DA 10-583 (rel. Mar. 31, 2010); *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, WC Docket No. 10-82, Public Notice, DA 10-680 (rel. Apr. 22, 2010).

² *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

³ 47 C.F.R. § 63.03.

⁴ Comments of Hypercube Telecom, LLC, WC Docket No. 10-82 (filed Apr. 14, 2010) (Comments).

⁵ *Id.* at 2-5 (citing *Hypercube, LLC, et al. v. Comtel Telcom Assets LP d/b/a Excel Telecommunications, Inc.*, Case No. 3:08-CV-2298 (N.D. Tex)).

complaint that is pending before the Commission's Enforcement Bureau that contains claims related to the dispute.⁶ Hypercube asserts that it does not oppose the proposed sale of assets, but urges the Commission to impose conditions on the transaction that are related to its access charge claims.⁷

The Applicants filed reply comments stating that Hypercube's ongoing dispute with Comtel is wholly unrelated to the proposed transaction.⁸ They assert that the access charges Hypercube claims Comtel owes were unlawful and are, in any case, already the subject of the U.S. District Court proceedings.⁹ They state that Hypercube's comments seek to secure remedies against Comtel prior to a determination that it has violated any legal requirements.¹⁰ They further argue that pre-judgment statutes in Texas concerning the distribution of assets by business entities apply should Hypercube prevail in the litigation, and that Hypercube has not demonstrated that the proposed transaction harms competition or otherwise contravenes the public interest.¹¹

After careful consideration of the record in this proceeding, we conclude that the concerns raised by Hypercube are not sufficient to persuade us to deny the transaction or to impose conditions on the terms of the transfer. We find that the transaction is likely to result in certain public interest benefits, including the continued provision of telecommunications service to Comtel's customers by Matrix, an

⁶ Comments at 3. On April 16, 2010, the Enforcement Bureau granted Comtel's motion for extension of the due date to convert the informal complaint into a formal complaint. Reply Comments at 19 (citing Letter from Rosemary McEnery, Deputy Chief, Market Disputes Resolution Division, to James H. Lister, Counsel for Comtel, and Michael Hazzard, Counsel for Hypercube, File EB-09-MDIC-0028 (rel. Apr. 16, 2010)).

⁷ Comments at 7-8. It requests removal of the transaction from streamlined processing, resolution of what Hypercube asserts are Comtel's outstanding obligations to Hypercube and any other similarly-situated carrier, and the establishment of an escrow fund by Comtel to cover any alleged access charge debts. It further requests that the Commission seek clarification from state utility commissions about existing and future traffic routing issues between Comtel and other carriers and condition approval of the transaction on Matrix entering into an interconnection agreement with Hypercube and "any other carriers with which Comtel is currently engaged in access charge billing issues." *Id.*

⁸ Reply Comments of Comtel Telecom Assets LP and Comtel Virginia LLC to Comments of Hypercube Telecom, LLC, WC Docket No. 10-82 at 2-6 (filed Apr. 20, 2010).

⁹ Applicants state that the Court already dismissed Hypercube's federal tariff claims against Comtel for the time period March 3, 2006 to March 31, 2009, which it asserts accounts for the bulk of the charges Hypercube claims it is owed, and that for the remaining time, the Court held that Hypercube must demonstrate that the services for which it is attempting to collect charges "added value" to the telecommunications network. Comtel states that this is a remaining issue in the litigation. Reply at 10 (citing *Hypercube LLC v. Comtel Telecom Assets LP*, Civil Action No. 3:08-CV-2298-G, 2009 WL 3075208 (N.D. Tex., Sept. 25, 2009)). Hypercube also argues that Comtel did not comply with universal service fund requirements under section 254(d) of the Act because it entered into a consent decree with the Commission to pay a fine and establish a compliance plan. Comments at 3-4. The Enforcement Bureau has determined that the consent decree resolves the matter, which is based on universal service claims raised in 2008 that are not related to the proposed transaction, and has terminated its investigation. *Comtel Telecom Assets LP*, File No. EB-08-IH-1372, Consent Decree, DA 10-418 (rel. Mar. 18, 2010).

¹⁰ Reply at 2-6.

¹¹ *Id.* at 16-17.

established competitive carrier currently providing service nationwide.¹² Applicants state that Matrix has the technical, managerial, and financial resources to ensure that the customers receive service under the same rates, terms, and conditions as they currently receive service.¹³ We agree with the Applicants that Hypercube's claims are not merger-specific¹⁴ and are more appropriately resolved in the pending litigation.¹⁵ We also find that Hypercube's claim that the Applicants will fail to comply with any legal or financial obligations to Hypercube or any other carrier after consummation¹⁶ is speculative and not supported by evidence in the record. We are thus satisfied that the proposed transaction is in the public interest and should be granted.

The Bureau finds, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity, and therefore grants the requested authorization. Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Jodie May, (202) 418-0913, Competition Policy Division, Wireline Competition Bureau.

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¹² Application at 6-7.

¹³ *Id.* at 7.

¹⁴ See *Verizon Communications, Inc. and America Movil, S.A. de C.V., Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, WT Docket No. 07-43, Memorandum Opinion and Order, 22 FCC Rcd 6195, 6206-07, para. 25 (2007) (rejecting assertions that a transfer of control should be denied or conditioned based on non merger-specific issues and finding that applicants were subject to existing requirements).

¹⁵ See *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18529, para. 191 (2005) (noting that a number of issues raised by commenters were the subject of other pending proceedings).

¹⁶ Comments at 5.